

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BLUEFIELD DIVISION

THOMAS CREIGHTON SHRADER,

Petitioner,

v.

CIVIL ACTION NO. 1:13-cv-09386

RICHARD B. IVES,

Respondent.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the various pleadings in this matter including the Petitioner's March 5, 2013 Petition Under 28 U.S.C. § 2241 for Writ of *Habeas Corpus* By a Person in Federal Custody (Document 1) filed in the Central District of California, and the Petitioner's July 19, 2013 Motion to withdraw his 2241 Petition (Document 379).

By Order (Document 8) entered on April 24, 2013, the District Court for the Central District of California transferred Petitioner's Section 2241 Petition to this District. By *Standing Order* (Document 11) entered on May 2, 2013, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

By Order (Document 371) entered on May 23, 2013, the Magistrate Judge re-designated the Petitioner's Section 2241 Petition as a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. Also on May 23, 2013, the Magistrate Judge

notified the Petitioner that if he does not wish to have his Section 2241 Petition re-characterized as a motion under Section 2255, he should inform the Court in writing by June 14, 2013. (Document 375 at 3.) On June 10, 2013, the Petitioner filed his response titled *Motion in Objection or in the Alternative Motion for Stay* (Document 378), wherein he objects to having his 2241 Petition re-designated as a 2255 Motion and requests that the Court “hold or stay any further proceeding” in this matter until the District Court for the Central District of California rules on his pending motion. Subsequently, on July 19, 2013, the Petitioner filed a Motion (Document 379) to withdraw his 2241 Petition.

On August 5, 2013, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 385) wherein it is recommended that this Court re-designate the Petitioner’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (Document 1) as a Petition Under 28 U.S.C. § 2241 for Writ of *Habeas Corpus* By a Person Federal Custody, grant the Petitioner’s Motion to withdraw his 2241 Petition (Document 379), dismiss the Petitioner’s Petition Under 28 U.S.C. § 2241 for Writ of *Habeas Corpus* By a Person Federal Custody (Document 1), and remove this matter from the Court’s docket.

Objections to the Magistrate Judge’s *Proposed Findings and Recommendation* were due by August 22, 2013. Neither party has timely filed objections to the same. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner’s right to appeal this Court’s Order. 28


U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** as follows:

- 1) The Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (Document 1) shall be **RE-DESIGNATED** as a Petition Under 28 U.S.C. § 2241 for Writ of *Habeas Corpus* By a Person Federal Custody;
- 2) The Petitioner's Motion to Withdraw his Section 2241 Petition (Document 379) is **GRANTED**;
- 3) Inasmuch as this matter has been re-designated as a Petition Under 28 U.S.C. § 2241, and the Petitioner's Motion to Withdraw his Section 2241 Petition has been granted, the Petitioner's *Motion in Objection or in the Alternative Motion for Stay* (Document 378) is **TERMINATED AS MOOT**;
- 4) The Petitioner's Petition Under 28 U.S.C. § 2241 for Writ of *Habeas Corpus* By a Person Federal Custody (Document 1) is **DISMISSED**; and
- 5) This matter is **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: August 27, 2013


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA